

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District
Name (under which you were convicted): <b>Robert James Talbot SR</b>		Docket or Case No.: <b>4:14-cr-00169-1</b>
Place of Confinement: <b>USP Atlanta</b>	Prisoner No.: <b>44679379</b>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) <b>V. Robert James Talbot SR</b>

**MOTION**

United States District Court  
Southern District of Texas  
FILED

1. (a) Name and location of court which entered the judgment of conviction you are challenging: **13 2018**

David J. Bradley, Clerk of Court

**U.S. District Court Southern Dis. of Texas (Houston)**

(b) Criminal docket or case number (if you know): **4:14-cr-00169-1**

2. (a) Date of the judgment of conviction (if you know): **NOV 26th, 2015 APPROX.**

(b) Date of sentencing: **NOV 26th, 2015 APPROX.**

3. Length of sentence: **6 1/2 years 28 months**

4. Nature of crime (all counts):

**1) Attempted Interference with Commerce by Robbery and Aiding and Abetting**  
**2) Solicitation to Commit a Crime of Violence**

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

**NA**

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐

No ☒

9. If you did appeal, answer the following:

- (a) Name of court: NA
- (b) Docket or case number (if you know): \_\_\_\_\_
- (c) Result: \_\_\_\_\_
- (d) Date of result (if you know): \_\_\_\_\_
- (e) Citation to the case (if you know): \_\_\_\_\_
- (f) Grounds raised: \_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: NA
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

- NA
- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?  
Yes ☐ No ☐
- (7) Result: \_\_\_\_\_
- (8) Date of result (if you know): \_\_\_\_\_
- (b) If you filed any second motion, petition, or application, give the same information:
- (1) Name of court: NA
- (2) Docket of case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?  
Yes ☐ No ☐
- (7) Result: \_\_\_\_\_
- (8) Date of result (if you know): \_\_\_\_\_
- (c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?
- (1) First petition: Yes ☐ No ☒
- (2) Second petition: Yes ☐ No ☒
- (d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Diminished Capacity, money, education, <sup>prison</sup> prevention

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** denial Habeas Corpus and Constitutional Violation

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Court's denial of writ of Habeas Corpus is certified as appealable under Fed. R.C.P. 22, where petitioner made a substantial showing of Constitutional violation - (court's not ordering forensic mental evaluation prejudiced defendant (me) from fair trial or being sentenced under mitigating factors of diminished capacity.)

I tried to raise the issue with the court about my mental state from the psychological Report that Gallenher provided which my Public Defender Phillip Gallenher hired to evaluate me.

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒ - NA

(2) If you did not raise this issue in your direct appeal, explain why:

NA

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

My Public Defender Winifred Pastorini talked me out of an Appeal in regards to the psychological Report I wanted to Appeal my case. Her lack of expertise only prevented me from moving forward.

GROUND TWO:

NA

~~(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):~~

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE:** \_\_\_\_\_

*NA*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

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**(b) Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- 
- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:**

*NA*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

*Stated on attached letter.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Docket N: 71, 73 CN: 4:14-CR-00169-1

4/2016 Production of Documents - Motion

3/4-2017 Apprx. Production of Documents  
issued raised in letter having ground for appeal with motion.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging: 7

(a) At the preliminary hearing:

Phillip Gallagher

(b) At the arraignment and plea:

Phillip Gallagher

(c) At the trial:

\* NA

(d) At sentencing:

Winifred Alcind Pastorini

(e) On appeal:

(f) In any post-conviction proceeding:

Winifred Alcind Pastorini

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ not at as of yet

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

lack of education in law.  
~~too~~ not receiving court documents, I was prevented.  
 lock in shu and lock-down, preventing me from contacting  
 courts.  
 lack of money for postal cost, paper. \$  
 See letter enclosed. 4 page

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

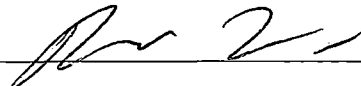
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or any other relief to which movant may be entitled.

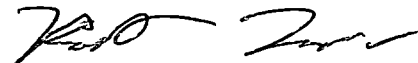
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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 11-20-17  
(month, date, year)

Executed (signed) on  (date)

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Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Post-Net  
SP Atlanta  
Box 150166  
Atlanta, GA 30315

Judge Fwing Werlein Jr  
Bob Casey U.S. Court  
P.O. Box 61010  
Houston, TX 77208  
Fifth Circuit

